

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN FEDERATION OF LABOR	)	
AND CONGRESS OF INDUSTRIAL	)	
ORGANIZATIONS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	03-2464 (GK)
ELAINE L. CHAO,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION

Plaintiff, American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO" or "Plaintiff"), has filed a Motion for Clarification as to Application of Court's January 22, 2004 Order. Upon consideration of the Motion, Opposition, Reply, and the entire record herein, and for the reasons stated below, Plaintiff's Motion is **denied**.

In 1959, Congress enacted the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401 et seq., ("LMRDA"), requiring unions, among other things, to file annual reports with the Secretary of Labor disclosing detailed information about their financial transactions. Specifically, section 201(b) of the LMRDA requires unions covered by the statute to file annually with the Secretary of Labor a financial report which accurately discloses their "financial condition and operations" for the preceding fiscal year. 29 U.S.C. § 431(b).

On October 9, 2003, the Department of Labor ("Department") promulgated a Final Rule captioned "Labor Organization Annual Financial Reports" ("Final Rule" or "Rule"). See 68 Fed. Reg. 58374 (Oct. 9, 2003). The Final Rule imposed several new financial reporting and disclosure obligations on unions, including requiring approximately 4,700 unions with annual receipts of \$250,000 or more to submit their financial report on a "Form LM-2." Under the Rule, unions must file the Form LM-2 electronically. The Rule provided that it would become effective January 1, 2004.

On November 26, 2003, the AFL-CIO filed the instant action seeking a Preliminary Injunction postponing the effective date of the Rule, as well as permanent relief setting aside the Rule and enjoining its implementation. On December 31, 2003, the Court granted Plaintiff's Motion for a Preliminary Injunction on the grounds that the AFL-CIO was likely to prevail on the merits of its claim that the January 1, 2004 effective date set out in the Final Rule was arbitrary and capricious. See AFL-CIO v. Chao, No. 03cv2464 (GK), December 31, 2003, Mem. Op..

On January 22, 2004, the Court issued a final order that enjoined the Department from imposing the Final Rule "until July 1, 2004, or ninety days after [it] makes a fully tested version of its electronic reporting software available to those unions covered by the LMRDA, whichever is later." AFL-CIO v. Chao, No. 03cv2464 (GK), January 22, 2004, Order, at 2-3. On March 26, 2004, the

Department released what it claimed was a "fully tested version" of the software.

On May 19, 2004, almost eight weeks later, the AFL-CIO filed the instant Motion for Clarification, claiming that the software the Department had made available is not a "fully tested version" of the relevant reporting software, and thus that the Final Rule should not go into effect July 1, 2004. On June 14, 2004, the Department filed its Opposition thereto, and on June 28, 2004, Plaintiff filed its Reply.

Plaintiff's arguments in support of its Motion are unconvincing for two reasons. First, unions that use a fiscal year beginning July 1, 2004 had six months to develop the new accounting systems, purchase the new computers and software, and train their staff to comply with the new Rule. In its January 22, 2004 Memorandum Opinion, this Court expressly found that a six-month transition period is sufficient "provided that the Department makes available its electronic reporting software by March 31, 2004." AFL-CIO v. Chao, No. 03cv2464 (GK), January 22, 2004, Mem. Op., at 53. The Department released such software on March 26, 2004.

Second, the Court did not attempt to define what would constitute "a fully tested version" of the Department's electronic reporting software in its January 22, 2004 Memorandum Opinion.<sup>1</sup>

---

<sup>1</sup> Significantly, neither party suggested, either before the Court issued its Opinion and Order, or immediately thereafter, (continued...)

The Department has responded in detail to each of the arguments the AFL-CIO has advanced in support of its Motion and, in light of the Department's expertise in this area, it is appropriate to give the DOL's explanations an "extreme degree of deference." Marsh v. Oregon Natural Res. Council, 490 U.S. 360, 378 (1989).

Thus, for the foregoing reasons, Plaintiff's Motion for Clarification as to Application of Court's January 22, 2004 Order is **denied**.

An Order will issue with this opinion.

July 13, 2004

\_\_\_\_\_  
/s/  
Gladys Kessler  
U.S. District Judge

---

<sup>1</sup>(...continued)  
language that was more specific. Indeed, Plaintiffs waited almost four months to file the instant Motion for Clarification which is, in reality, a motion to stay the effective date of July 1, 2004.